

APPEAL NO. 050445
FILED MARCH 25, 2005

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). A contested case hearing (CCH) was held on January 12, 2005. Although, the hearing officer found that during the qualifying period for the first quarter of supplemental income benefits (SIBs) the appellant/cross-respondent (claimant) did not attempt in good faith to obtain employment commensurate with his ability to work, and that the claimant was not entitled to SIBs for the first quarter, then he determined that the claimant was entitled to SIBs for the first quarter. On February 5, 2005, the Director of Hearings issued an "Order on Motion to Correct Clerical Error" reflecting that the claimant was **not** entitled to SIBs for the first quarter. (Emphasis added).

The respondent/cross-appellant (self-insured) filed a conditional appeal, asserting the hearing officer's decision and order dated January 18, 2005, contained a clerical error that was properly corrected through Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE § 140.5(e) (Rule 140.5(e)) by the Director of Hearings. The self-insured asserts that if the Appeals Panel agrees that the hearing officer's decision contained a typographical error as corrected by the Director of Hearings, its appeal should be disregarded. In the alternative, the self-insured asserts that the claimant is not entitled to SIBs for the first quarter and that the hearing officer's decision and order contains a typographical error. The claimant appealed the hearing officer's SIBs determination based on sufficiency of the evidence grounds. The self-insured filed a response to the claimant's appeal, asserting that the claimant was not entitled to SIBs for the first quarter.

DECISION

SELF-INSURED'S APPEAL

The self-insured asserts that the hearing officer's decision contained a clerical error. Finding of Fact No. 5 states that "[d]uring the qualifying period for the 1st quarter, Claimant did not attempt in good faith to obtain employment commensurate with Claimant's ability to work." Conclusion of Law No. 3 states that "Claimant is not entitled to [SIBs] for the 1st quarter." The hearing officer decision states that the claimant is entitled to SIBs for the first quarter. The Director of Hearings issued an "Order on Motion to Correct Clerical Error" on February 5, 2005, granting the relief requested by the self-insured that the claimant was not entitled to SIBs for the first quarter. Accordingly, no further action is necessary. The self-insured's appeal is, therefore, dismissed.

CLAIMANT'S APPEAL

The claimant's appeal being untimely, the jurisdiction of the Appeals Panel was not properly invoked, and the decision and order of the hearing officer have become final under Section 410.169, as corrected by the Director of Hearings.

Texas Worker's Compensation Commission (Commission) records indicate that the hearing officer's decision was mailed to the claimant on January 25, 2005. The claimant states in his appeal that he received the decision on January 29, 2005. Pursuant to Section 410.202, as amended June 17, 2001, and Rule 143.3(e), the claimant had until February 18, 2005, to mail his request for appeal to the Commission, and the mailed request for appeal had to be received by the Commission by February 28, 2005. The envelope in which the appeal is transmitted bears a postage meter date stamp of February 18, 2005, but also bears a United States postmark of February 19, 2005. The Appeals Panel has repeatedly held that when there is a date discrepancy between a postal meter date stamp and the postmark of the United States Postal Service (USPS) that the USPS postmark controls. Texas Workers' Compensation Commission Appeal No. 981793, decided September 15, 1998, and cases cited therein. Since the claimant's request for appeal was post marked after February 18, 2005, it was not timely filed with the Commission. Section 410.169 provides in pertinent part that a decision of a hearing officer regarding benefits is final in the absence of a timely appeal by a party.

The claimant's appeal being untimely, the jurisdiction of the Appeals Panel was not properly invoked, and the decision and order of the hearing officer have become final under Section 410.169, as corrected by the Director of Hearings.

The true corporate name of the insurance carrier is **(a self-insured governmental entity)** and the name and address of its registered agent for service of process is

(NAME)
(ADDRESS)
(CITY), TEXAS (ZIP CODE).

Veronica L. Ruberto
Appeals Judge

CONCUR:

Margaret L. Turner
Appeals Judge

CONCURRING OPINION:

I concur but wish to point out that the claimant's request for review is untimely if the 5-day deemed date of receipt is used. See Rules 102.5(d) and 143.3(d)(1).

Robert W. Potts
Appeals Judge